In the High Court of Punjab and Haryana at Chandigarh.

RSA No.2150 of 2004

Dated of decision:21.05.2007

Jagdish Kumar .....Appellant

Versus

Inderjit Singh .....Respondent

CORAM

HON'BLE MR. JUSTICE PERMOD KOHLI.

Present: Mr.VK Shukla, Advocate,for the appellant.

Mr.Paramjit Singh Jammu, Advocate,for the respondent.

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Permod Kohli, J.

This Regular Second Appeal is directed against the judgment and decree dated 27.04.2004 passed in Civil Appeal No.45 /03 by the learned Additional District Judge, Moga, decreeing the suit for specific performance filed by the respondent reversing the judgment and decree dated 14.08.2003 passed in Civil Suit No.368 of 03.08.1996 by the learned

Additional Civil Judge (Senior Division), Moga.

The respondent herein, filed a suit for specific performance on the basis of an agreement to sell dated 15.03.1996 in respect of property measuring 4.5 marlas. The appellant denied the execution of the agreement to sell. Both the parties produced handwriting and finger print experts before the trial Court to prove the signatures of the appellant on the agreement to sell. The plaintiff produced Handwriting and Finger Print Expert, namely, Sanjeev Kumar Sharma, whereas the defendant produced Navdeep Gupta, Handwriting and Finger Print Expert. Both the Experts opined in favour of their respective parties for whom they appeared. Sanjeev Sharma, Handwriting and Finger Print Expert compared the signatures of the defendant Jagdish Kumar on the agreement with documents stated to be containing the admitted standard signatures of the defendant. The expert witness proved that the signatures on both the documents belong to the same person. The trial Court, however, did not agree with the opinion of the Handwriting and Finger Print Experts. However, the learned trial Court itself shouldered the responsibility of acting as an expert and attempted to analyse the signatures of the defendant on the agreement with other documents. The learned trial Court observed that the document is forged one. The learned trial Court,

accordingly, dismissed the suit for specific performance and also declined the alternative relief of refund of the earnest money.

The plaintiff-respondent preferred an appeal before the learned Additional District Judge, Moga, who reversed the findings of the learned trial Court and held that the plaintiff has established the due execution of the agreement to sell dated 15.03.1996 by the respondent-defendant Jagdish Kumar and consequently, decreed the suit for specific performance. The learned Lower Appellate Court has based its findings on the statement of Harbans Singh Kanda, Deed Writer and two attesting witnesses, namely, Nazar Singh and Major Singh, who proved the execution of the agreement to sell. The learned Lower Appellate Court also noticed that the Deed Writer had earlier also written the sale deed whereby the defendant had purchased the suit property only a day earlier than the execution of the agreement to sell. Since the Deed Writer had written both the documents i.e. the sale deed whereby the defendant acquired the suit property and the agreement to sell whereby he entered into sale transactions. There is no reason to doubt his evidence in any manner. Even if, the opinion of the expert witnesses produced by the parties is ignored, there is sufficient material on record to sustain the findings of fact recorded by the learned Lower Appellate Court. The learned Lower Appellate Court being the final

Court of fact, I do not feel that its findings are required to be interfered with in Regular Second Appeal. Otherwise also, no substantial question of law is involved in this appeal.

In view of the above, I find no merit in this Regular Second appeal and the same is hereby dismissed with no order as to costs.

(Permod Kohli)
Judge

May 21, 2007
BLS